IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.644 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

ORIENT ABBRESSIVES LTD.
VERSUS
SHRI A. CHAUDHARY & ANR.

Appearance:
MR YS LAKHANI for petitioner
MR JA ADESARA for respondent No.1
MR SAMIR DAVE for respondent No.1

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 20/2/2001

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. It is not in dispute that the original document relating to the complaints filed by the petitioner against the respondent No.1 under section 138 of the Negotiable Instruments Act were produced before the court to refer the same as evidence of the complaint. It is true that these original documents were filed in the court after recording of the plea of the accused. I fail to see any justification in the approach of the learned Judicial Magistrate that filing of the document at this stage will cause any prejudice to the accused. It is a matter of complaint filed by petitioner u/s.138 of the Negotiable Instruments Act on dishonour of two cheques total amounting to Rs.15,40,000/= given by respondent No.1 to the petitioner. Cognizance has been taken in the matter by the Magistrate and the plea of the accused has been recorded. Xerox copy of some of the documents have been filed on the record along with the complaints. These documents are material documents and in case same are not produced on record, certainly the petitioner may fail in the complaint. It is not the case where by taking of these documents on record any of the defence of the accused-respondent is likely to be prejudiced. It is a procedural matter and substance and not the form is important. If we go by the substance of the matter as well as keeping in view the justice oriented approach, the order of the learned trial court cannot be allowed to stand. The learned revisional court has not interfered with the order on the ground that it was an interlocutory order.

#. In the result, this special criminal application succeeds and the same is allowed and the order of the learned J.M.F.C. Porbandar rendered in Criminal Case No.580/95 and No.2265/95 (consolidated) dated 20.8.97 and that of the Addl. Sessions Judge, Porbandar dated 16.3.99 passed in Cri. Revision Application No.29/97, are hereby quashed and set aside and the documents filed by the petitioner are ordered to be taken on the record. Rule is made absolute accordingly. In the facts of the case, no order as to costs.

(S.K.Keshote, J.)

(sunil)